

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA**

In re Subpoena to Non-Party Lindsey
O. Graham in his official capacity as
United States Senator,

Case No. 1:22-cv-03027-LMM

in the matter of:

Special Purpose Grand Jury, Fulton
County Superior Court Case No.
2022-EX-000024.

**SENATOR LINDSEY O. GRAHAM’S MEMORANDUM IN SUPPORT OF
HIS MOTION FOR AN IMMEDIATE HEARING ON HIS EMERGENCY
MOTION TO STAY ORDER AND ENJOIN SELECT GRAND JURY
PROCEEDINGS PENDING APPEAL**

Senator Graham is currently scheduled to be questioned before a state Special Purpose Grand Jury on August 23—less than a week away—about what he claims was his protected “Speech or Debate,” despite the Constitution’s command that Senators “shall not be questioned” on such matters and even though sovereign immunity should bar the subpoena lodged against him. *See* U.S. Const. art. I, § 6, cl. 1. Senator Graham has a statutorily-guaranteed right to appeal this Court’s rejection of these immunities, which will be violated upon questioning. But, despite Senator Graham’s request, the District Attorney has thus far not agreed to postpone Senator Graham’s appearance before the grand jury pending the outcome of that forthcoming appeal, which Senator Graham offered to expedite.¹ (Ex. 1, Decl. of Brian C. Lea). Because the District Attorney’s apparent tactics would deny Senator Graham his right to be heard in appellate court, Senator Graham has filed a Motion to stay this Court’s order remanding the case to state court and to enjoin the Special Purpose Grand Jury from questioning Senator Graham pending the outcome of his appeal.

¹ As explained in the attached declaration, Senator Graham’s counsel spoke with counsel for the Special Purpose Grand Jury (F. McDonald Wakeford) at approximately 9:00 AM on August 16 and proposed postponing Senator Graham’s appearance before the Special Purpose Grand Jury until after disposition of his appeal. Mr. Wakeford stated that he would check with his colleagues and provide an answer by the end of the day. No response was received on August 16, and the District Attorney’s office has not returned two follow-up calls placed on the morning of August 17.

That Motion should be decided on an expedited basis because Senator Graham’s scheduled grand jury appearance is less than a week away. Therefore, and as explained further below, the Court should waive the time requirements under Local Rules 7.2 and 65.2 and immediately decide the Motion or, in the alternative, grant a hearing as soon as possible, but no later than August 18, to be followed by a decision immediately thereafter.

ARGUMENT

Local Rules 7.2(B) and 65.2 both allow this Court to waive the standard time requirements of Local Rule 7.1 and “grant an immediate hearing on any matter requiring such expedited procedure.” They require a motion setting forth good cause for the expedited procedure and the necessity for such expedited procedure. *Id.*

Here, good cause exists for this Court to grant Senator Graham’s motion for emergency treatment. This Court denied Senator Graham’s motion to quash the Special Purpose Grand Jury Subpoena (“Subpoena”) on August 15. (Doc. 27.) Governing law gives Senator Graham a right to appeal that decision. *See, e.g., BP P.L.C. v. Mayor & City Council of Baltimore*, 141 S. Ct. 1532, 1538 (2021); *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 711–12 (1996). But, in his forthcoming appeal, Senator Graham will assert immunities—the same ones asserted in this Court—that will be irreparably damaged by the grand jury’s very act of

questioning on August 23. *See, e.g., United States v. Swindall*, 971 F.2d 1531, 1549 (11th Cir. 1992). Senator Graham therefore asked the District Attorney if she would postpone Senator Graham's appearance pending the outcome of his appeal, for which he offered to seek expedition. *See* (Ex. 1, Decl. of Brian C. Lea). The District Attorney has neither responded nor returned follow-up phone calls, despite stating that the District Attorney would answer Senator Graham's request by the end of August 16. *Id.*

Senator Graham has now filed a Motion to stay this Court's Order of August 15 and to enjoin the special purpose grand jury from questioning him—both to protect his right to appeal and the more fundamental constitutional immunities it in turn protects. But there is not enough time between now and August 23—less than a week—for the usual briefing schedule set forth in Local Rule 7.1 to run its course prior to Senator Graham's scheduled testimony. *See* LR 7.1(A)–(C), NDGa (allowing fourteen days to file both a response to a motion and a reply to a motion). Given those circumstances and the important constitutional interests at stake, good cause exists for this Court to decide Senator Graham's Motion on an emergency, expedited basis.

CONCLUSION

Thus, upon good cause shown, Senator Graham respectfully requests that this Court waive the time requirements under Locals Rule 7.1 and 65.2 and immediately decide the Motion or, in the alternative, grant a hearing as soon as possible, but no later than August 18, to be followed by a decision immediately thereafter.

Date: August 17, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH LR 5.1(B)

I hereby certify that this brief has been prepared with one of the font, point, and style selections approved by the Court in LR 5.1(B)—namely, double-spaced in 14-point Times New Roman font.

Date: August 17, 2022

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CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2022, I electronically filed the original of this brief with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to all attorneys of record by operation of the Court's electronic filing system.

Date: August 17, 2022

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